

2017-2018 Supplementary Estimates (C) and 2018-2019 Interim Estimates

TEMPORARY FOREIGN WORKER PROGRAM

PROPOSED RESPONSE:

- **The Temporary Foreign Worker Program and International Mobility Program allow employers to hire foreign nationals on a temporary basis.**
- **In collaboration with Employment and Social Development Canada and Immigration, Refugees and Citizenship Canada, the Canada Border Services Agency (CBSA) investigates cases of suspected employment fraud related to these programs.**
- **CBSA's investigators focus primarily on the organizers of complex cases of fraud, such as employers or consultants suspected of multiple offences.**
- **The CBSA is requesting \$6.5 million* in the 2018-19 Interim Estimates for criminal investigation activities to support program integrity and prevent the exploitation of temporary foreign workers.**

(*Does not include Employee Benefit Plans, Accommodations and Shared Services Canada costs.)

Backgrounder:

In administering the Temporary Foreign Worker and International Mobility programs, the Canada Border Services Agency (CBSA) determines the admissibility of individuals seeking entry to Canada, issues permits at ports of entry and ensures that all persons seeking entry to Canada meet the requirements to enter, work and/or stay in Canada. The CBSA also investigates and pursues the criminal prosecution of persons who commit border-related offences.

When CBSA becomes aware of possible criminal contraventions of the *Immigration and Refugee Protection Act* (IRPA), the Agency gathers supporting evidence and takes appropriate actions, such as launching criminal investigations or prosecutions.

Criminal investigators focus on complex cases of fraud, aimed primarily at the organizers, facilitators and perpetrators of fraud (i.e. employers or consultants that wilfully contravene IRPA). Complex cases of fraud are those that go beyond a single incident, often requiring follow-up investigation or use of specialized investigative techniques (i.e. search warrants) to gather evidence to support the investigation and prosecution of the offence or previous offence(s). The CBSA investigates cases of suspected employment fraud under IRPA.

Employers who employ "a foreign national in a capacity in which the foreign national is not authorized to be employed (s. 124)" can be fined up to \$50,000 and imprisoned for up to two years, or both.

Employers who intentionally misrepresent or withhold information or provide false information to contravene the IRPA (i.e. lie on their Labour Market Impact Assessment application about their efforts to hire Canadians) can be fined up to \$100,000 and imprisoned for up to five years or both.

The \$6.5 million in funding being sought through the 2018-19 Interim Estimates is directly aligned to Budget 2017 commitments to strengthen program compliance within the Temporary Foreign Work and International Mobility Programs. This funding forms part of a government-wide effort led by Employment and Social Development Canada (in collaboration with IRCC and CBSA) which is seeking \$167.8 million in total from 2017-18 to 2019-20.

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ENTRY/EXIT INITIATIVE

PROPOSED RESPONSE:

- **Entry/Exit information is required to ensure the integrity of Canada's management of the border.**
- **Unlike many countries, we do not currently collect exit information, which means we cannot be sure who remains in Canada and for how long.**
- **At land ports of entry, Canada and the United States currently collect and exchange basic biographic information on third-country nationals. Canada also shares with the United States information about US citizens.**
- **Entry into one country serves as an exit record from the other.**
- **Bill C-21 will enable the Canada Border Services Agency to collect basic information, similar to what is on page 2 of a passport, about all persons leaving Canada by land or air.**
- **This new measure will enhance our ability to track Amber Alerts, combat human trafficking, and prevent people from travelling overseas to join terrorist groups. It will also allow immigration authorities to know when someone who is here illegally has left the country.**
- **The Agency is seeking \$10.3 million in the 2018-19 Interim Estimates for the acquisition and ongoing maintenance of systems and technology required to collect, analyse, use, store and disclose exit information.**

Backgrounder:

On June 30, 2013, the Government of Canada implemented measures to collect exit information for third-country nationals (non-citizens) and permanent residents at all automated land border Ports of Entry (POE). The information exchanged between Canada and the United States (US) is biographic information only, found on page 2 of a passport, and is limited to the information strictly necessary to accurately match an entry and exit record to a traveller.

Once fully implemented, the collection of exit information at the land border will be seamless and done through an electronic exchange of biographic entry information with the US, such that a record of entry into one country is used as a record of exit from the other. In the air mode, the CBSA will collect air exit information from air carriers. This information would not be shared systematically with the US.

The CBSA has engaged the Office of the Privacy Commissioner (OPC) to discuss how best to ensure the protection of personal information collected under Entry/Exit. Through both Privacy Impact Assessments, and consultations with the OPC, the CBSA is addressing concerns and implementing recommendations, such as the posting of signage at land border crossings to advise affected travellers that information will be collected and shared with the US.

Using *Customs Act* authorities, CBSA will collect information under the Entry/Exit initiative and disclose it to the following federal partners:

- Immigration, Refugees and Citizenship Canada, to enhance immigration program integrity (i.e. determine compliance with residency obligations and citizenship revocation investigations).
- Royal Canadian Mounted Police, on a case-by-case basis when the name of a known individual is matched against traveller information, including pre-departure airline manifests.
- Canadian Security Intelligence Service on a case-by-case basis, when the name of a known individual is matched against inbound and outbound traveller information, including pre-departure airline manifests.
- Employment and Social Development and the Canada Revenue Agency, for the purpose of administering benefits programs which have residency requirements.

In the global context, exit information is collected on a regular basis. Our closest international partners either already have some format of exit information collection, or are moving to implement such a system. The US, United Kingdom, Australia, and New Zealand all have exit systems and key European Union member states have or are in the process of implementing similar programs.

Overall, the CBSA received \$108.2 million over 5 years and \$10.3 million in ongoing funding to develop the systems and technology required to allow the Agency to collect, analyse, use, store and disclose exit information on all persons. The Agency is seeking \$10.3 million in the 2018-19 Interim Estimates for ongoing maintenance requirements for the Entry/Exit information system including radio frequency identification technology.

On October 30, 2017, the Standing Committee on Public Safety and National Security reported Bill C-21, *An Act to Amend the Customs Act*, back to the House of Commons, amending the data retention period to 15 years for exit information.

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**THE CANADA BORDER SERVICES AGENCY ASSESSMENT AND
REVENUE MANAGEMENT (CARM) PROJECT**

PROPOSED RESPONSE:

- **The Canada Border Services Agency Assessment and Revenue Management (CARM) system will modernize CBSA's assessment and revenue management of duties and taxes on commercial imports into Canada.**
- **Once fully implemented, CARM will reduce administrative burden for importers and other trade partners, and enhance the ability of small and medium-sized businesses to view and manage their accounts online.**
- **The CARM project will also address concerns raised by both the Auditor General and the Public Accounts Committee in 2009 regarding the Agency's tax revenue accounting and reporting systems.**
- **Finally, CARM will increase the transparency of the Agency's processes and improve the integrity of the information reported. This, in turn, will enhance compliance efforts.**
- **The CBSA is requesting \$21.1 million* in the 2017-18 Supplementary Estimates C and \$42.6* million in the 2018-19 Interim Estimates for the design stage of the CARM project.**

(*Does not include Employee Benefit Plans, accommodation, Shared Services Canada costs or HST).

Backgrounder:

In 2017-2018, the Canada Border Services Agency (CBSA) received authorities to increase its reference levels by an additional \$63.7 million over 2 fiscal years for the Design Stage of the CARM project.

The delivery model that will be used for CARM is innovative, involving collaboration with the private sector.

The project has multiple phases. The first phase of the CARM project, the Accounts Receivable Ledger was implemented in January 2016. The Expenditure Authority and Contract Authority for the second phase of CARM (Design Stage) was approved in November 2017.

The vendor that will help design the remainder of CARM was selected after a two year competitive collaborative procurement process, conducted by the CBSA in partnership with PSPC, and informed by lessons learned from past procurements.

On February 7, 2018, the CARM Design Stage contract was awarded to Deloitte, Inc. As the winning vendor, Deloitte will be responsible for executing the CARM Design Stage according to the terms of the CARM contract.

It is planned that the CARM Design Stage will be completed within 12 months of Task Authorization approval by PSPC.

Implementation timelines for the remainder of CARM will be determined during the CARM Design Stage.

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EXAMINATION OF ELECTRONIC DEVICES

PROPOSED RESPONSE:

- **The Canada Border Services Agency (CBSA) is committed to respecting privacy rights while protecting the safety and security of Canadians.**
- **Canadian border officers do not examine electronic devices as a matter of routine but only when there is a multiplicity of indicators that they should include the device in the examination.**
- **While CBSA officers can compel travellers to provide passwords to examine data stored directly on the device, they do not access information stored either remotely or online, like a social media account.**
- **In line with the Government's commitment to enhance transparency, the Agency will soon begin publicly reporting on the number of times electronic devices are examined by CBSA officers.**
- **Like every sovereign nation, the United States has its own laws governing admissibility. In our discussions with American counterparts, we have underscored our position that travellers heading in either directions should be treated fairly, respectfully and in accordance with the law.**

Backgrounder:

Electronic goods have always been subject to the same reporting requirements as other types of goods crossing the border. The constitutionality of warrantless border examinations of electronic devices has been upheld by the courts.

Paragraph 99(1)(a) of the *Customs Act* gives Border Services Officers the authority to examine “goods” (including electronic goods) at the border for customs-related purposes. In this context, “goods” are defined in section 2(1) of the Act to include “any document in any form” and therefore encompasses electronic documents.

The Agency examines electronic goods in line with the June 2015 Operational Bulletin entitled “Examination of Digital Devices and Media at the Port of Entry – Guidelines”. It provides guidance on a Border Services Officer’s authorities when examining digital devices or media at ports of entry, explains limitations to those authorities, and sets out guidelines on when such examinations should and may be performed.

Examinations of digital devices and media are performed during an examination, with a clear link to the administration or enforcement of its mandated program legislation governing the cross-border movement of people and goods.

Individuals also have the obligation under section 13 of the *Customs Act* to present and open their goods if requested to do so by a BSO. Because a password can be required to open and examine documents on an electronic device, it can be compelled to allow for the travellers’ obligations to be fulfilled. Failure to provide a password can result in the detention or seizure of the electronic device. Charges can also be laid for failing to comply with *Customs Act* obligations.

The examination of electronic goods uncovers customs-related offences ranging from undervalued or undeclared goods, to the interception of prohibited goods contained within the devices themselves (child pornography, obscenity, etc.).

The retention and the collection of any documents, electronic or otherwise, must comply with any parameters set by the Act under which it was collected (e.g. the *Privacy Act*, *Customs Act*, *Immigration and Refugee Protection Act*, *Customs Tariff*), while ensuring that the information is available for the duration of any applicable appeal period. As a baseline, section 4 of the *Privacy Regulations* indicate that personal information used for an administrative purpose must be retained for a period of at least two years.

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MULTI-YEAR IMMIGRATION LEVELS PLAN

PROPOSED RESPONSE:

- **Under the 2017 Multi-Year Levels Plan for immigration, the Government of Canada maintains its commitment to a strong immigration program and will welcome 300,000 immigrants in calendar year 2018.**
- **The role of the Canada Border Services Agency under this immigration plan is to undertake security screening abroad, admissibility determinations, and the processing of both travellers and goods at Ports of Entry.**
- **The Agency is also mandated to conduct enforcement activities inland, for those who become ineligible to hold permanent resident status.**
- **The CBSA is requesting \$42.6 million* in the 2018-19 Interim Estimates to increase capacity to meet the workload associated with the 2017 Multi-Year Levels Plan.**

(*Does not include Employee Benefit Plans, Accommodations and Shared Services Canada costs.)

Backgrounder:

Immigration, Refugees and Citizenship Canada (IRCC) is the lead department for Canada's Immigration Programs, including the resettlement of refugees and the development of target immigration levels that are presented to Parliament as part of the "*Annual Report to Parliament on Immigration*".

Multi-year plans enable federal partners to better adapt to operational priorities and requirements.

The CBSA's role in administration and enforcement of Canada's Immigration Program includes:

- security screening to inform IRCC officer decisions on the issuance of visas;
- verification of identity and assistance to partners prior to a PR coming to Canada (e.g. airlines, local authorities and airports);
- processing of new PRs when they arrive at a Canadian port of entry (POE) through verification of applicant identity and compliance with legislative and regulatory requirements for admissibility to Canada; and
- immigration enforcement within Canada, including investigations, detentions and potential removals of individuals who are deemed inadmissible pursuant to the *Immigration and Refugee Protection Act* (IRPA).

The CBSA currently receives baseline funding to process up to 250,000 permanent resident landings per year. The annual permanent resident (PR) target going forward is 300,000 individuals.

Through the 2018-19 Interim Estimates, the CBSA is requesting \$42.6 million for activities related to the 2017 Immigration Levels Plan, including immigration security screening, border processing, inland enforcement and intelligence and force generation.

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TEMPORARY CLOSURE OF THE SOMBRA PORT OF ENTRY

PROPOSED RESPONSE:

- **Our government is committed to ensuring the secure and efficient flow of legitimate trade and travel across the border.**
- **The Canada Border Services Agency's (CBSA) Sombra Ferry port of entry, on the St. Clair River, was closed due to significant ice flow damages to the causeway that connected the mainland to the Agency's office and the Sombra Ferry Terminal.**
- **The Sombra office will remain temporarily closed while the Bluewater Ferry owner/operator continues to explore options to repair its privately-owned causeway.**
- **Travellers are encouraged to use the Blue Water Bridge as an alternate border crossing which is located nearby in Point Edward, Ontario.**
- **Once the infrastructure is repaired and deemed safe, CBSA will resume normal operations.**

Backgrounder:

The Canada Border Services Agency (CBSA) Sombra Ferry port of entry is located in Sombra, Ontario. This port of entry processes passengers and vehicles disembarking off the Bluewater Ferry, which crosses the St. Clair River in Southwestern Ontario, from the State of Michigan. The port of entry includes a ferry terminal, NEXUS marine entry and a telephone reporting site. The hours of operation are 7:00am to 11:00pm, seven days a week (weather permitting).

On January 2, 2018, the CBSA Sombra port of entry office was temporarily closed due to the yearly seasonal ice build-up on the St. Clair River.

Subsequently, on January 11, 2018, the Bluewater Ferry operator reported to the CBSA that ice flows caused significant damage to the causeway connecting the mainland to the CBSA Sombra port of entry office and the Bluewater Ferry Terminal.

With no access due to the damage to the causeway, the CBSA office will remain closed while the Bluewater Ferry owner/operator explores options for repair. The causeway is privately owned by the Bluewater Ferry.

During the CBSA office closure, travellers are encouraged to use the Blue Water Bridge, located in Point Edward, Ontario, as an alternate border crossing.

When seasonal ice conditions improve, the CBSA's Walpole Island Ferry office will re-open and thereby provide an additional option for travellers crossing the St. Clair River into Canada.

The CBSA, Southern Ontario Region is monitoring the situation closely and working with the Sombra Ferry operator to determine the most effective way forward.

Local media coverage about the damaged causeway focuses on the extensive cost of rebuilding for the owner/operator. Articles state that Sarnia-Lambton MP Marilyn Gladu reached out to several ministers including Public Safety Canada, Transport Canada and Fisheries and Oceans Canada to make them aware of the issue and the need for funding. A recent media article reports that MP Gladu and St. Clair Township Mayor met with the Parliamentary Secretary to the Minister of Fisheries, Oceans and the Canadian Coast Guard to discuss an alternate, cheaper solution to the original \$2.5-million proposal. MP Gladu has said in the House of Commons, and in the media, that the ferry serves as a much needed economic link between Canada and the United States. Media articles also indicate that the owner of the ferry cannot speculate how long they will be closed.

From a CBSA perspective, once the infrastructure is repaired and deemed safe, normal operations will resume.

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**IMMIGRATION DETENTION / STRENGTHENING THE NATIONAL
 IMMIGRATION DETENTION FRAMEWORK**

PROPOSED RESPONSE:

- Immigration detention is a measure of last resort and used only in limited circumstances, such as those where there are serious concerns about a danger to the public, a flight risk or a person's identity, and only after alternatives to detention are first considered.
- We have been working hard to improve the immigration detention system and minimize its use. In fact, the number of people in detention is down 28% from five years ago.
- We have put in place a directive that includes the best interest of the child as a primary factor for the Canada Border Services Agency to consider when making detention decisions affecting families. Our goal is to avoid placing children in detention as much as humanly possible.
- We are continuing our work on the new \$138-million National Immigration Detention Framework, which will:
 - expand alternatives to detention;
 - significantly improve conditions in holding centres;
 - provide better mental and medical health services;
 - reduce reliance on provincial facilities; and
 - strengthen partnerships with organizations such as the Red Cross and the United Nations.
- To this end, the CBSA will transfer \$12.35 million through the Supplementary Estimates to Public Services and Procurement Canada to finalize the Agency's acquisition of a surplus federal building in Surrey, British Columbia. This facility will be retrofitted into an immigration holding centre.
- As well, the CBSA is in the design phase of a Crown-owned, purpose-built immigration holding centre in Laval, QC which is expected to open in 2020. As with the Surrey IHC, a new facility in Laval presents an opportunity to design an IHC in a manner that aligns with international standards and best practices.
- In the words of the UN High Commissioner for Refugees: "By and large, the Canadian system remains exemplary worldwide."

Background: (On the National Immigration Detention Framework)

The Canada Border Services Agency (CBSA) works to ensure that it is exercising responsibility for detentions to the highest possible standards, taking into account the physical and mental health of detainees and the safety and security of Canadians.

CBSA officers detain foreign nationals and permanent residents when there are reasonable grounds to believe the person is inadmissible to Canada and is a danger to the public; unlikely to appear (flight risk) for immigration processes; or unable to satisfy the officer of their identity (foreign nationals only).

Immigration detention is not punitive but exercised to ensure the integrity of the immigration system and to ensure public safety. Detention is a measure of last resort and officers must always consider alternatives. A CBSA officer's decision to detain a person under the IRPA is subject to a review by the Immigration and Refugee Board (IRB), an independent quasi-judicial tribunal. Detainees must appear before the IRB within the first 48 hours of being detained. At a detention review, the IRB may release the person or identify conditions for release or determine that detention should continue. If the IRB determines that detention should be continued, the individual must appear in the next seven (7) days and every 30 days thereafter.

The Government of Canada is working to improve the immigration detention system and minimize its use. To this end, the Government is investing \$138 million in the new National Immigration Detention Framework, which will enhance alternatives to detention (ATDs), provide better medical and mental health services at CBSA Immigration Holding Centres (IHC), expand partnerships and include key investments to improve immigration detention infrastructure. In addition, the Minister of Public Safety and Emergency Preparedness issued new Ministerial Direction (MD) that provides guidelines and considerations for the CBSA when making a detention decision that involves a minor. Among its key objectives, the MD directs the CBSA to actively and continuously seek ATDs, stop detaining or housing minors (except in extremely limited circumstances) and preserve the family unit.

The current ATDs available in all regions include imposition of conditions and release on a performance bond and/or cash deposit to a bondsperson. Release to the Toronto Bail Program is available in the Greater Toronto Area (GTA) only. An expanded ATD Framework will launch in all regions beginning in spring 2018 and will eventually include national Community Case Management and Supervision, Voice Reporting and in the GTA, Electronic Monitoring on a two-year pilot basis.

In provinces where there are no IHCs, or for higher-risk detainees including those who pose a security risk, the CBSA relies on provincial holding facilities.

Two new infrastructure projects will replace the IHCs in British Columbia and Quebec to dramatically reduce the need for the use of provincial correctional facilities for immigration detention. The CBSA will continue to pursue a service contract in the GTA region for the provision of an IHC with an increased capacity to detain medium and higher risk detainees, including persons with historical minor criminality, as opposed to provincial correctional institutions.

Detention of Minors

Minors are only detained as a last resort and the "Best Interests of the Child" are always taken into consideration. Policy and regulatory work is underway to further limit the detention of minors and to avoid family separation. Generally, unaccompanied minors are not detained, but released into the care of family or provincial child protection services. Accompanied minors may remain with their detained parent in low-risk facilities. Unaccompanied minors are not housed with detained adults in low-risk facilities. For non-danger or non-security cases detention is only exercised for the shortest period of time and is primarily focused on supporting removal. The detention of a minor, however, is not precluded where the minor is considered a security risk or a danger to the public. CBSA officers must consider prescribed criteria in advance of making a detention decision that involves a minor.

On February 13, 2018, a snapshot report of minors indicated that two minors (one Canadian and one foreign national) were housed at an IHC with their detained parent as it was deemed to be in the children's best interests. At the time of the report, no minors were subject to a detention order. A housed minor is not subject to a detention order and is free to remain and re-enter the IHC with the consent of the parent/legal guardian.

Since November 2016, CBSA has been posting statistics related to immigration detention online at <http://cbsa.gc.ca/security-securite/detent-stat-eng.html>. Quarterly statistics for the first and second quarters of 2017-2018 are slated to be posted within the next few weeks. This will include details on minors including their status, age, gender, length of housing/detention and facility type, as well as the average and median length of time in a facility.

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Backgrounder: (On the Immigration Holding Centre (IHC) – Surrey, BC location)

The current IHC facility in the Pacific region opened in 2001 and is located in the basement of the Vancouver International Airport (VIA). The 24-bed facility is owned by the Airport Authority. There are a number of significant deficiencies at this facility, including:

- insufficient number of beds to meet requirements in this region;
- a sterile environment with no access to natural light, fresh air or exercise opportunities;
- lack of space for family visits;
- the lack of adequate space for family detention;
- lack of space for meetings with legal representatives or community support groups resulting in the need to transport detainees to the CBSA's downtown offices for meetings; and,
- inadequate access to health care services.

The new IHC will: provide for 70 beds; meet international standards; minimise the need for guard presence; provide ready access to fresh air and outdoor space; and provide visiting space for family members, NGOs and visitors.

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